

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

TIMOTHY LEE COLES,
Plaintiff,

v.

Civil No. 3:24cv20 (DJN)

G. DALTON, *et al.*,
Defendants.

MEMORANDUM ORDER
(Dismissing Defendant and Transferring Action to the Western District of Virginia)

Plaintiff, a Virginia prisoner, brings this action. Except for Defendant Adrian Tucker, who works in the Central Regional Administrator's Office in Richmond, Virginia, the Defendants reside in the Western District of Virginia, and the events giving rise to this action are alleged to have occurred in the Western District of Virginia.

As a preliminary matter, to state a viable claim under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him or her of either a constitutional right or a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998) (citing 42 U.S.C. § 1983). "Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed, even under the liberal construction to be given pro se complaints." *Potter v. Clark*, 497 F.2d 1206, 1207 (7th Cir. 1974) (citing *U.S. ex rel. Brzozowski v. Randall*, 281 F. Supp. 306, 312 (E.D. Pa. 1968)). Here, Defendant Tucker is only named where Plaintiff lists the Defendants, and he is not named in Plaintiff's Statement of the Claim. Accordingly, Plaintiff has

failed to state a claim against Defendant Tucker, and any claims against him are DISMISSED WITHOUT PREJUDICE.

Pursuant to 28 U.S.C. § 1391(b), venue is proper for the remaining action in the Western District of Virginia and not in the Eastern District of Virginia. Accordingly, pursuant to 28 U.S.C. § 1406(a), this action will be transferred to the Western District of Virginia.


The Court hereby ORDERS that:

1. This action is FILED solely for the administrative convenience of the Clerk;
2. This action is TRANSFERRED to the United States District Court for the Western District of Virginia.

The Clerk is DIRECTED to transfer all pleadings filed in this action and a copy of the docket sheet to the Clerk of the United States District Court for the Western District of Virginia.

Let the Clerk file a copy of the Memorandum Order electronically and send a copy to Plaintiff.

And it is SO ORDERED.

/s/ 
David J. Novak
United States District Judge

Richmond, Virginia
Dated: January 31, 2024